PRINCIPLES FOR THE RE-FORMATION OF THE CIVIL FORUM SYSTEM IN THE HUNGARIAN PEOPLE'S REPUBLIC*

by

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Those who have studied the program of our festive congress will have realized the two main principles governing the choice of the topics to be discussed at this plenary meeting of the Hungarian lawyers: the aim being that they make their voice heard on questions of *fundamental* and at the same time *topical* importance. Our theme, the settlement of the problem of jurisdiction in fact corresponds to these requirements, since this question is of outstanding importance and since the solution brooks no delay.

In this introductory lecture I want to take up first the past development of the forum system in civil cases, dealing with the principal features of its current position, next with the governing principles of a desirable reform, and lastly with the three most up-to-date problems of the system of the administration of justice.

I should like to premise a few observations by way of terminology. The term "forum system" – although commonly used in Hungarian legal parlance and legal life – occurs fairly rarely in the science of legal procedure. In connection with the reform of the economic management, the reform of the forum system has been mentioned frequently. What does the concept "forum system" cover at all ? When speaking of reforming it, actually we refer to the determination, appointment of the organs empowered to act in legal disputes. In the context of the administration of justice: definition of the forum system will mean drawing a line between the jurisdiction of the courts and that of other (state or social) agencies. This is what is referred to in legal writings as "*jurisdiction (authority) in the broader sense*", in other words the answer to the question: which are the cases belonging to the courts and which are heard by other organs.

Thus we have, on the one side, the so-called *judicial way*, and on the other side the *extra-judicial way* involving the authority of *other state* (also social) *organs*.

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Accordingly, the problem of the forum system is akin to the subject-matter of judicial organization, since the latter will only become timely when – as the cases are progressing along – the question whether a case pertains to the judicial way, has already been settled. Similarly, the question of jurisdiction and territorial competence (in the narrower sense) will have precedence over the problems connected with court procedures. (For this very reason, the problem of "*sedes materiae*" is a permanent moot point between the law of judicial organization and the laws of procedure.)

I.

1. I might state without exaggeration that we are witnessing a rather rare occurrence in our legal life, viz. that a kind of *public opinion* has developed within the Hungarian legal profession favouring an all-embracing re-formation of the forums called to deal with civil cases. Awareness of the necessity of revisions has become widespread among the representatives of diverse branches of the legal profession: we may even speak of a uniform legal public opinion in favour of it. Opinions only differ as to the details of the solution. This, after all, is natural and even advantageous as it enables the analysis of the various facets of the problems and reaching the most suitable decisions.

The evolution of such a uniform opinion in the profession – including the theoreticians and practicians – on the necessity of a settlement, should be regarded as a *favourable sign*. I mean, we may regard this uniform backing given by the Hungarian lawyers to the need for solution of the forum problem as an *outcome* of the evolution. It is, however, also an *active factor* promoting further development.

As regards the latter (I have now reversed the order since the latter is an evident concept, not requiring further analysis) it might be simply said: the awareness, the readiness of the society – or at least of the legal fraternity – to accept such a reform is certainly favourable and will simplify the practical implementation of the inevitable changes.

Now as regards the *reasons* behind such a formation of the public opinion: these should be looked for in the changes of both the structure and the methods of the economy. Under the new system of economic management our fundamental social conditions have undergone considerable changes absorbing, as they did, new features. In the light of these changes the lack of the systematization – so important for the undistrubed development of the various legal relations arising within economy and for the elimination of snags – is becoming ever so conspicuous.

It seems further that the economic reform not only involved the revision of the judicature problems directly pertinent to it, but also – as we have all seen – fulfilled the role of a *catalyst* promoting an *all-embracing* settlement of the forum problem. As it is, this situation had been maturing for years, while the forum system of civil cases was

becoming more and more involved. However, awareness of this fact has come rather late and it required the reform program of the new economic management system to produce a breakthrough.

2. As a good example of our sluggishness to notice the unhealthy overgrowth of our forums dealing with civil disputes, I might cite the decision to set up so-called "cooperative farms arbitration committees" within each county. (Cf. sec. 70, Law-Decree No. 7 of 1959.). However, they were never actually set up, and later cancelled (see sec. 8, Law-Decree No. 8 of 1960). (Thanks to this today we have to decide the fate of one forum less.) Since they are outside the civil scope I just refer to the fate of the "committees acting in petty offences".[1]

Maybe the quoted examples are not convincing by themselves, since these are cases taken at random. But we should be convinced *by the result* of the yearslong development confronting us: according to the universal opinion, our forum system is extremely involved and baffling.

At present, in addition to the courts, the following organs have jurisdiction to hear civil disputes, in determined cases: the economic arbitration commission, the labour arbitration committe, the laymen's courts, the organs of farming cooperatives and artisans' cooperatives, trade union organs, organs of the social insurance service, the courts of arbitration, certain state-administrative organs, military commanders etc. This list speaks for itself.

3. Nevertheless, when *looking back upon the evolution*, I see no cause for recriminating. It is well known that after the Liberation, the new popular-democratic power had to face an even more complex forum system: the judicial and pseudo-judicial system of the Horthy-regime – partly inherited from feudalistic times. Such had been, e.g. the Earl Marshal's Court, the National Land Reform Court, the Anti-Trust Tribunal, the Patents Court, the Special Court dealing with cases arising under the Electric Power Act, the Constitutional Administrative Court a.s.o. The Hungarian people's democracy abolished these essentially antidemocratic judicial institutions. Or else, what seemed reasonable and reconcilable – even partly – with the popular democratic system, was merged into the uniform system of judicature (e.g. patentlaw disputes, certain state-administrative actions).

Thanks to these measures, the Hungarian judicial organization did, in fact, become simpler after the Liberation. Apart from a few, transitory civil judicial institutions concomitant with winding up the consequences of the war and with the initial economic development of the post-war years,[2] we might state that our forum system actually met the requirements, in the form determined and established by the Constitution. In the year following the promulgation of the Constitution (1950) a further step towards simplification was made by the abolishment of the Courts of Appeal replacing the former High Courts of Justice.[3]

It was only thereafter that the complexity of the forum system started growing. At that time various institutions developed and were

vested with the authority of decision; these organs whose list (and the enumeration of their various competences) fills many pages in recent studies on the forum system.

However, it is useless to recriminate even at this point. At most one can say that as we see it today, such an overcomplication of the forum system could have been avoided. As a matter of fact: the development was *natural* and inevitably linked with the peculiarities of evolution of a period devoted to laying the foundations of socialism.

4. From among the said peculiarities I would dwell on three points.

First of all: the old mechanism relying on "plan directives" – despite its apparent simplicity – embraced rather complex economico-social conditions including such class-struggle phenomena which are no longer occurring nowadays. The necessity of building up a new system made us face constantly new tasks. Often it would seem to us that the best and simplest answer to a new problem was *re-organization*, i.e. setting up a new institution (or a new forum to deal with legal disputes, as the case may be). How far this method was due to the deliberate or unconscious negation of the institutions of past – this would be another tale.

Secondly, it should be recalled that this development was *rapid* to a degree never giving the legislator a chance to pause and reflect. Those were no times for quiet observation enabling to notice the superfluity of certain institutions and having time for their subsequent weeding out. Now, at the crossroads of the new economic mechanism, time has matured even for that.

Lastly, let us not forget that the *coordination* of the legislative activities of various governmental departments was not solved in a satisfactory manner during a long time. Even after legislative measures were issued in the matter of coordination of the codification, a long time went past before the Ministry of Justice became, indeed, the center of such coordination.

The final balance looks like this: during the quarter of a century past since the Liberation and the nearly 20 years since the promulgation of the Constitution, we have built up a socialist legal system in both the substantive law and the procedure, and even completed it as far as was humanly possible. Parallel with this, however, there ensued an *unhealthy overgrowth* of the organs called to hear civil disputes. This situation became obviously untenable with the development of our legal system concomitant with the economic reform. Incidentally, – among others – this was the essential point the significant government decision on the simplification of legal statutes and procedures.

5. Thus, the following situation has developed:

a) our forum system has become too *complex* and baffling – defying the obvious rule of socialist democratism requiring that a socialist state should have a simple judicial system enabling the worker to become familiar with it;

b) the present division has begun decidedly to hamper the uniformity – a primary requirement in socialist jurisdiction;

c) in several instances a *parallelism of jurisdictions*[4] has replaced the uniform regulation scopes and the assignment of analogous cases to identical courts.

Here are some blatant examples to illustrate the former points.

Let us take for instance the forum system of *disputes connected with innovations*. No less than four different organs may proceed in such cases. First of all the competent trade-union organ may deal with all kinds of complaints. Secondly, in defined disputes (in connection with the material reward due on the basis of pre-set targets, competition, or contract, or else: in connection with innovation fees; further disputes affecting special bonuses, reimbursment of expenses or wages), provided that no-one but the worker of an enterprise is involved: the rules of labour disputes will apply. This means: the labour arbitration committee has jurisdiction of the first instance. Thence the case may go to court for revision following a request to that effect. If the innovator is a person not employed by the enterprise (whether alone or in conjunction with a company employee), a regular lawsuit must be filed with the court which shall decide the case in a regular two-instance procedure. Lastly: in disputes arising in connection with the consideration between socialist organizations: the economic arbitration commission will have authority.[5] All this can be explained away, but much less, approved.

The forum system of innovation disputes is merely subject to another complex system, namely that governing the *labour disputes*. Here the enterprise's labour arbitration committees will decide in the first instance; the territorial labour arbitration committees in the second instance. Let us add that the present rules admit also of the competence of district courts by way of exception. And finally, the so-called top functionaries are exempted on a personal basis; the labour disputes of the latter will be settled by the superordinated organ – the same which had passed the decision appealed against. However, in certain cases the complaint will be heard by the territorial labour arbitration committee, and in cases where otherwise a court would decide in the second instance, the case will belong to the district court. In view of the latter: the territorial labour arbitration committee has both a first instance and a second-instance jurisdiction.

There exists a complete parallelism of the jurisdictions as a results of a new regulation. We allude to the *penalty for economic offences*. If the culprit is an enterprise, the county (or municipal) economic arbitration commission will have jurisdiction; if the culprit is an agricultural cooperative, jurisdiction will belong to the county (municipal) court of justice. Incidentally, this regulation has been created already under the new economic management system[6]). Such an artifical duplicity of jurisdiction (resulting from the present forum system) is sufficient to show the necessity of a uniform regulation.

6. The given state of the forum system involves problems not only for the implementation of law and for further legislation, but also for the *legal science*, which, had to engage in several questions resulting from it. The most characteristic of these moot points relates to the question, whether a given forum bears a *judiciary character* or not.

Let us mention, first of all, the dispute of many years' standing concerning the *economic arbitration*, viz. whether the economic arbitration commission is a state-administrative organ or a judicial one? Whether its procedure is a state-administrative function or one of judicature. As is known: both tenets have had their advocates in socialist legal writings. Also, there are those, including myself, who profess a third tenet, namely that none of these polarized standpoints can grasp the essence of the problem. In fact, this is a *hybrid institution*, one whose essential characteristics (particulary in the state preceding the arbitration reform introduced by Govt. Decree No. 45(1967) were of a state-administrative nature, but which also contained several judicial elements. On the basis of this evalution we called the economic arbitration commission a *court-like organ* performing a *parajudicial* activity. It would be un-historical to say today that all these disputes could have been saved if the uniformisation had been carried through earlier. Let us face the fact that it is still in the planning stage while awaiting legislative decision.

Similar debates were waged in socialist legal writings about the question whether the activity of *laymen's courts* (also called social courts) was judicial or not. The former view asserting the judicial character of the laymen's judicature seems rather obsolete, even quaint, in the light of our present knowledge. The correctness of the opposite view has been generally accepted. Still, the existing arguments do not go beyond the formal criterion: viz. that only the functions of state courts can be considered as judicial activity; in other words the organs of judicature are those provided for in the Constitution which does not include the laymen's courts.

Apart from the disputes ranging around the said two scopes (sometimes not devoid of the stamp of scholasticism), there is a very real, and often-heard, allegation according to which the *territorial labour arbitration committes* are, in fact, special-character courts within the judicial system of the Hungarian People's Republic. There is, of course, an opposite opinion, basing on the autochtonous character and hierarchy of the labour arbitration. The latter view, incidentally, corresponds with the statutory regulation.

These scientific differences of opinion consuming much time, paper and labour have revealed one thing, namely that the existing regulation of forums is debateful, contentious. The legal science has reacted in its own way to the ambivalent character of statutory regulations, sometimes to the clash between the statutory fact – and the requirement thought to be correct.

II.

7. Before we attempt to examine the bases of the re-formation of the forum problem, it is worth while to cast a look around (and back) to see how far we have got along the legal regulation destined to implement the economic reform. The answer to this question will have its repercussions on the further rate, as well as depth, of the transformation of the forum system.

The *first stage* of the legislative work preceding the entering into force of the economic reform (January 1, 1968) was that of preparation. The *second stage* is being carried out within the new system of economic management. In the present stage – which is to last one or two more years – the tasks facing us are: analysis of the effects of legal rules made earlier; gathering of experience as to their implementation; study of the legislation required for the functioning and consolidation of the new economic mechanism; preparation of final and all-embracing legal statutes for the new economic management system for the time when it is running at full speed. This all-embracing statutory regulation will ensue in the *third stage.*

As I see it we are somewhere about the middle of the second stage. This means that on the strength of experience gathered so far we shall carry on with temporary measures while keeping in mind the preparation of the long-term settlement. As you know, the envisaged amendment of the Constitution also sets limits to the legislative work aiming at finality.

What is true for legislative work in general, also applies to the preparation of statutory rules affecting the settlement of the forum system.

8. At this point it is opportune to raise the question, *whether the settlement of the forum problem affects the Constitution at all.*

If we look at the forum problem as a whole, (including the civil courts, the penal and administrative forums, further the guidance and supervision of the judiciary, lastly the supervision of legality), then the answer is a decided *yes.* When, however, we are omitting the problems falling outside the administration of justice in civil cases, we may safely say that a reorganization *does not necessarily* affect the Constitution. (Within parantheses: such a view is rather justified, at least temporarily, since what the new economic mechanism has primarily brought into motion to any greater extent, is the field of civil jurisdiction.)

Now, the fact is that none of the three institutions most closely affected by the disputes on the forum system, (namely the economic arbitration commission, the labour arbitration committee and the laymen's court) has a constitutional character. It would not affect the wording of the Constitution even if it were decided to turn some of them into special courts. As it is, the Constitution merely provides a general allusion to the fact that special courts may be established by means of enactments (Sec. 36, para. 2).

With this I want to express that the settlement of the forum question of civil disputes need not wait until the settlement of the basic constitutional problems, at least not until it goes far beyond the above-indicated scope. However, in view of the fact that settlement of a few other related questions affecting the judiciary organization and procedure is on the agenda anyway, it seems expedient (albeit the implementation may not follow necessarily in a simultaneous manner) to *adjust the concepts beforehand*, as a minimum.

This view seems to be supported by the structural characteristics of the said Government Resolution, which pronounces on the necessity of the establishment of a clear forum system both in the fundamental and immediate tasks, and among the perspective targets of an all-embracing legal reform.

9. Now as to the fundamental points of the reformation of the forum problem the first question that arises is that of *methodology:* What should be the principles of systematization; the main directions ?

Several possibilities are available.

We may start, first of all, from *objective* points of departure.

More precisely this would mean querying – before deciding on the forum – whether the case is a *legal dispute or not?* Undoubtedly, this is an essential formal feature. When a case bears the character of a legal dispute then it usually requires the services of an organ of judicature. Where there is no legal dispute (e.g. in actual non-litigious cases) decision may be safely entrusted to another kind of organ. However, this point does not offer a complete answer to our problems, since there are various contentious cases that are not heard by judicial organs under the present regulation, nor will they be in the future.

Thus, obviously, there emerges a second supplementary point to be considered, viz. the *social relations* in the background of the given contentious case. Or else, translated into the language of law: *which branch of substantive law* applies to the given legal relation ? Unfortunately, apart from the possibility of complexity, the said points of reference do not always provide the correct answer. Just by way of example: even under civil law (thought to be typically beloging to the judicial way) many disputes do not fall under the jurisdiction of the courts, while vice versa, many cases falling within the scope of state-administrative law may be adjudged by the courts.

Actually, in several cases even the *simultaneous* consideration of the said two objective points of reference will fail to provide an unequivocal answer. Therefore it seems necessary to consider a further, *subjective* point of reference. Namely, the fact whether the *relation of the parties to the dispute* is one of subordination and supraordination, or one of co-ordination, will provide a further guideline. The resultant of these three guidelines will usually point to the proper forum. As we said: "usually". It should be clear that the organization of the forum system did not start from a "carte blanche"; nor is the result a comprehensive, thoroughly thought-over plan, culminating in a circumspect forum system. On the

contrary: we are dealing with the result of a statutory process, drawn out in time, bridging several historical periods, reflecting the requirements of development more or less correctly with bits constantly being added to the already existing structure.

In other words, putting it frankly: *the casual occurrences of the statutory regulation* often break through the system developing by the simultaneous consideration of all primary guidelines.

10. In view of what has been said: it would not be right to start from preconceived ideas which are bound to prove doctrinaire in the light of reality and future possibilities. It would not be right to lay down requirements which, though correct from a theoretical outlook, cannot be carried out in practice. It would not be correct – on considerations of principle – to lay down maximum requirements which, although corresponding to some kind of legal perfectionism, to an ideal legal symmetry, yet are far from the actual reality, which makes them irrealistic and irrealizable. Let us exercise sober self-restraint! Let us admit that we cannot carry out a reasonable conversion of the forum system – developed along with socialist evolution – by means of Utopian proposals.

Let us start from the *actual state of the forum system* and carry out the most urgent task: *simplification* in the stricter sense. First let us determine what has *become superfluous and expendable* from the existing, gradually built-up forum system; what is to be *purposefully converted* under the new system of economic management. This would mean the reversal of the said gradual growth – or if you prefer: hyperthrophy. Allow me to make a comparison: what we need are *garden-scissors* to cut away unwanted shoots so as to assist the development of the trunk and the main branches.

In my opinion, this would be the *immediate task* facing us during the remaining time of the said second period of legislation connected with the new economic mechanism. This should be followed, in the third period, by the long-term task of a comprehensive and final settlement.

Such self-restraint means that henceforward we should concentrate on a few *essential* questions, eliminating all that remains outside this scope.

11. From the foregoing it would be absolutely wrong to conclude that I merely wanted to give some practical advice, such as: "Let's put principles aside and set down to work!" The second part of the appeal is certainly true, but as to the first part: my tenet is just the contrary: *neither the moderate goals of the immediate program nor the comprehensive tasks of the long-term settlement can be realized without keeping the basic principles constantly in mind*!

In this respect I would differentiate between two groups of the *pivotal principles*, arranging them according to their hierarchical sequence.

Into the *first group* of the principles of re-formation I would classify the *general*, fundamental tenets of the organization and functions of the socialist state, which are governing also for the analysis of the problems of the forum system; any settlement should actively promote these. The

said principles must be allowed to prevail at all times, even when the settlement is meant to be transitory.

The *second group* of the principles consists of the *specific* topics applying to the questions of the forum system. Some of these cannot be fully realized in the transitory stage of the reform.

Which principles belong to the said subsoil ?

Such major principles, or else guiding lights for perfectioning the forum system are: further development of *socialist democratism:* complete prevalence of *socialist legality*, constantly more *effective legal protection* of the citizens and socialist organs.

Obviously, this is not the time to rediscover these principles of settlement and to start implementing them. However, it is fitting to talk about one thing: just as we are carrying out the development of our socialist society, economy and state under changed circumstances, likewise we must proceed more decidedly towards perfectioning the democratic principles, the legality and legal protection.

a) In connection with *socialist democratism* I would just like to emphasize three points.

The concept of unifying, simplifying and clearing the forum system is in itself a requirement of socialist democratism. This is the right approach to the full realization of the principle of *uniform socialist jurisdiction.* This ideal was embodied in the demand of a unified *judicature*, the latter being a state when the unity of the court system ceases to be a mere slogan, when extrajudicial jurisdictional organs have been wound up or have shrunk to a negligible quantity. (Apart, of course, the *arbitration tribunal* which is a natural and immanent antithesis of the state court). This is the state when the military court remains the only special court and specialized jurisdiction is entrusted to specialized benches within the uniform court system. I am aware that for the time being this is still an Utopian concept but it is one we must strive for, the least being that *we should not increase the distance from this ideal.* This will be the most accessible – and therefore most democratic – forum system for both the socialist organs and the citizens, i.e. the so-called public seeking legal aid".

My second observation is that the development of socialist democratism ought not to be restricted to its *extensive sense.* As regards the administration of justice: we should not think of broadening the *popular basis.* (For the moment I will not dwell on the problem of lay assessors). Nor should we necessarily strive to take actual judicial activity *locally* nearer to the people; e.g. to the place of work for the benefit of the workers (laymen's courts); to the living district – for the benefit of the tenants (village or council courts). What I mean is that our democratic courts should be made more *operative* through rationalization. Their specialization should be carried further with the help of internal organizational measures, thus improving their professional efficiency.

Such a perfection of our civil judicature system – in the spirit of socialist democratism – is part of a more general process: the *evolution*

of our socialist statehood. It is clear that the consolidation and increased efficiency of the mechanism of the *judicial system* – which is part of the socialist state mechanism – will be an important factor in the further development of our state organization. By this it will have contributed towards the realization of the program of the development of state and socialist democracy, as outlined in the March 5th and 6th resolutions of the Central Committee of the HSWP and the Government.

b) Now as regards the prevalence of *socialist legality*, the following circumstances deserve attention from the aspect of the forum system. The multiplicity and extreme dividedness of the forums dealing with civil cases is obviously disadvantageous to the uniformity of *judicial practice*, and consequently, to uniform legality. Such a situation does not advance the uniformity of the *guidance* of judicial activity either. Lastly, it has an unfavourable – sometimes outright disorganizing – effect on the *supervision of legality (i. e. the rule of law)*.

In order to prove the last statement let me refer to the following awkward situation. The supervision of legality of the courts' civil jurisdiction is entrusted, within the organization of the State Attorney's Offices, to the *Branch of Civil (Court) Supervision*. whereas the control of the procedure of the economic arbitration commission (which is also a civil procedure) is entrusted to the *Branch of General Supervision*. There is an analogous situation in respect of laymen's court procedures (incidentally: hardly backed by legal guarantees – Cf. Sec. 33. para. 1, Law-Decree 24 of 1962) the supervision of which belongs to the *Branch of General Supervision*. However, when in an identical case state court proceedings were initiated, or when the case is later referred to a state court for the sake of competence, then the *Branch of Civil (Court) Supervision* of the State Attorney' Office will have authority. This system is the results of the organizational building-up of the State Attorney's Office which may be intrinsically consistent. The apparently illogical bifurcation is due the parallelism of the organs called to pronounce judgement.

c) The third fundamental guiding principle, *the effectivity of legal protection* requires, by its very nature, proper *procedural* means. Nevertheless – although to a lesser extent but preceding the former – the purposeful regulation of the *forum system* will play a great role in boosting the effectivity of legal protection.[7]

The first idea that arises at this point is that every legal claim, every legal dispute shall have its proper forum capable of deciding it; none of them should be diverted to a dead-end. There is no effective legal protection without an *airtight* forum system.

The next requirement, in my opinion, is that jurisdiction be not only the right but also the *duty* of the forum designated to exercise it. From another approach: we shall not designate a forum to decide a question when we have our doubts whether it will be capable of doing so. To the ears of a Hungarian lawyer this requirement may sound alien and queer; as everybody knows, the Hungarian law ignores the possibi-

lity of *denegatio iustitiae*. That being so, what is the sense to invest a social organ (the laymen's court) with exclusive jurisdiction while empowering it to refuse the case when it proves too complex or difficult, and to forward it to a state court ? (Cf. Sec. 25, paras. 2.3, Law-Decree 24 of 1962).

Finally, a reasonable, unambiguous forum system, one that involves the minimum of disputes of competence and necessitates the least occasion for relegation: this is the kind that will promote the requirement of *timeliness*, of speed – so impartant in civil judicature.

On the strength of the said three fundamental guiding principles we may draw the final conclusion that the rationalization of the forum system must go concomitantly with an increased professional *standard*. In other words: *specialization* must be provided for, *within the unification of the forum system*. The most constructive way for this is (as said before) when specialized benches proceed within the uniform court system (while simultaneously specialization must meet up-to-date demands.) For the sake of descriptiveness we are borrowing from the vocabulary of another science: we must strive to "*integrate our forum system while differentiating our judicature*."

12. In the second layer of the guiding principles of the re-systematization of forums are those of which I said that they have a *specialized character*. These will act *directly* – without any transmission – upon the concepts relating to the conversion of the forum system. Ever since the latter problem has been on the agenda, these principles have been widely discussed in scientific disputes and periodicals alike, so that they should have boiled down by now.[8]

Surveying them we find that our theoreticians and practical lawyers have spared no efforts to unveil them; they have trained the highlight on every important aspect, moreover their conclusions were usually supported by practical experience.

Summing up the outcome of the theoretical investigations carried out so far, we find that a great many theses have been laid down which provide guidelines for the transformation of our civil forum system. Let me simply name a few of them: unification, rationalization, clarity, accessibility by the workers, airtightness, elimination of parallelisms, identical organ for identical disputes with identical procedures, reduction of the instances of appeal, broadening of the court jurisdiction, approach to the court procedures, guidance of judicature based on uniform grounds of principle, speeding up the court procedure, proximity to the workers, stableness, professional competence a.s.o.

Maybe this simple listing will convince you that all these requirements are important and right, although some of them do not relate to the regulation of the forum system but rather to that of procedure, yet it makes no particular difference since these questions are interconnected anyway.

For the sake of better concentration I would like to emphasize a few of them: those which – in my opinion – have signal importance under

the given conditions, furthermore which could be built up most consistently on the three basic guiding principles outlined above.

a) I think that the first guideline to serve the simplification of the forum system is the requirement of the *unity of forums*, as far as it can be approached. This includes the principles of "identical-type disputes to be adjudged by an identical organ" and "guidance of judicature based on uniform grounds of principle."

b) At the same time this would be an important step forward towards increasing the *lucidity* of the forum system.

c) Once the forum system has shed its superfluous institutions, it will become easily *accessible* by the workers: it will be no problem finding the organ competent to decide the issue.

d) The realization of these requirements points towards the *courts*. The court must be – in an increasing manner – the basic forum for deciding legal disputes. "*All out for the courts*" –should be the slogan. Keeping a constant tally of the practical possibilities, we must strive for the broadest possible introduction of *uniform judicature by courts*. While this process is progressing, efforts should be made to develop the court-like procedural elements of the extrajudicial proceedings – possibly surviving in a dwindling number. Essentially, this is the meaning of the precept of "following the *court model*".

It is my conviction that as we go along the realization of the said basic and professionally competent guidelines, our judicial mechanism will become more and more perfect until it enables resolving the judicial tasks likely to emerge during the further construction of an advanced socialist society.

III.

13. Finally, I should like to outline my standpoint concerning the *three principal questions* coming up for dicussion – in addition to the problems of principle. These are: economic arbitration, labour arbitration, and laymen's courts.

I think there are several reasons for *dealing with just these* institutions.

First of all: the economic arbitration commissions, the labour arbitration committees and the laymen's courts carry the greatest *economic and socio-political weight* in the whole system of non-judicial organs while their relative weights may differ inter se). These are the institutions which are most closely connected with the everyday activities of the socialist organs and the citizens; these are the institutions that will attract most of their interest – among the extra-judicial organs – in the entire forum system.

Secondly, their priority is warranted by the fact that the new system of economic management has *increased the timeliness* of supervising the legal solutions relating to them. In fact, certain changes have ensued already.

Thirdly – and following from the above – the fact is that most of the disputes of the last one-and-a-half or two years have centred around

the said institutions – from among the multitude of judicial organs. The statement might be ventured that these are the very institutions in respect of which the spiritual *preparation* of the forum reform has progressed the farthest.

Lastly, I want to reverse an originally negative argument. Undisputedly, the said three extrajudicial institutions show more of the features of the *court model*. Thus, from this aspect, these will correspond best to the requirements. Making another step forward, this might mean (ought to mean anyway) that, after the thorough weighing of the pros and cons, let us now cross the Rubicon!

I believe that the further factors responsible for the dividedness of our forum system are of a lesser importance, both practically and theoretically. It will be easier to deal with those problems once the principal questions are solved.

14. In the course of the debates regarding the economic arbitration[9] the opinion has been more or less uniform that we should progress further along the road of reform first trodden one-and-a-half year ago (Govt. Decree 45/1967 – XI. 5). Nor do opinions differ inasmuch as the jurisdictional conversion should be completed sooner or later, i.e. economic arbitration must be turned into regular court proceedings.

Apart from procedural problems: as regards organization, the opinions mainly vary inasmuch as, whether economic arbitration should be taken over by *special courts* (economic tribunals) within the judicial system, or whether this should be done in the framework of the *general court system*. Even the adherents of the special court concept seem ready to accept my earlier alternative proposal, that a peak organ called *Economic Division* should be established within the Supreme Court.

Among the advocates of the complete merger into the general system of judicature there is a difference of opinions: viz. some of them propose to apply the *general rules of jurisdiction* in respect of the cases now belonging to economic arbitration (i.e. part of the cases would be heard by the district courts); whereas others would like to hand over the entire jurisdiction to *county courts*. They agree in so far that in both cases an Economic Division should be established within the County Court. As regards the latter: it should be added that, if the jurisdiction of district courts were to become institutional, it remains to be seen whether *each* county court would need a separate Economic Division. Indeed, according to the 1968 statistical survey of the cases handled by economic arbitration commissions, in some counties less than – or just about – 300 cases were filed. For the sake of expediency, in some county courts it would be preferable to establish *Joint Civil and Economic Divisions*.

In my own view, in the long run we shall have to arrive at a unified court jurisdiction; i.e. the jurisdiction of general courts must be later extended to these cases as well. However, as a *transitory regulation* I am prepared to accept the setting up of special courts but only with the proposed variant: i.e. Economic Division in the Supreme Court.

I would say that complete unification is a remote target. The more so, because I would think it expedient to institutionalize the *jurisdiction of the district court* for these cases. This question, however, is linked with another problem of a more general character: viz. that the district court – as such – should be converted into a court of first instance with general competence, and without exception. There had been earlier proposals to that effect.[10] I am aware that this is a grave and far-reaching problem, intervowen with many other serious questions. (Just to mention a few: revision of the system of values of the judicial hierarchy; possibility of individual judgement by the Supreme Court; even affecting – *horribile dictu* – the judges' salaries.)

15. As to the *labour arbitration:* the majority of Hungarian lawyers profess that the present system of settling labour (legal) disputes is unsatisfactory, and a decided effort should be made to bring it closer to the *courts*. In this respect it would not be correct to speak about the extension of the courts' jurisdiction since there are no regular, two-instance court proceedings. The usual court competence is not ensured: there is just a one-stage revision, in certain exceptional categories.

I approve of the opinion that in labour (legal) disputes the following ways should be opened depending on the nature of the required decision and the character of the case: *a)* complete *exclusion of the judicial way; b)* extension of the scope of *one-stage revision by court*; *c) two-stage court proceedings.*

The first category would comprise those managerial decisions affecting the labour relation, which are not liable to be disputed in contradictory proceedings. The second group comprises those labour disputes, where the collective character of the legal relation basically affects the smoothing of conflicting interests. Accordingly it is sufficient to ensure the single-stage judicial revision of the legality of the decision of the collective (i.e. the labour arbitration committee which it will be necessary to maintain, even to develop). The third group comprises the legal disputes involving real labour interests and legal issues; by their very nature these will require regular court proceedings.

If such solutions are reached, the particular *territorial labour arbitration system* will become superfluous, but their staff could be used to cope with the excess work consequently arising with the courts.

Obviously, these are no easy matters. The transformation of a historically developed, well-conditioned and – for a long time – correct, structure requires a thorough preparation. The clear demarcation of the said three groups of cases and their definition needs further analysis too.

16. Finally, there is the third problem: the institution of *laymen's courts*. This has been on the agenda several times during the past years. Opinions have differed: there are those for and those against. However, there is the actual experience gained with them. A common feature of the diverging opinions was that further investigations were certainly needed but decision had to be made sooner or later. The uncertainty, having lasted for a couple of years, would have to be liquidated. Either

the laymen's courts must be consolidated and turned operative, or else they must be abolished. In addition, one may encounter undertones saying that laymen's courts should be left to fade away.

I think that at this Congress we might try to form a more decided opinion. The time seems to be ripe for it. In connection with the re-formation of the forum system, the problem is waiting to be solved. I do not believe that it is necessary to defer judgement until the later period of perspective settlement.

Allow me to sum up my own views. When the laymen's courts were first established (Council of Min. Res. 1041 of 1956. — V. 30.) they were meant as disciplinary organs in labour cases. The reorganization of the laymen's courts in 1962 (Law-Decree 24 of 1962) was, in fact, no more than the start of a *large-scale experiment*. At that time we vested a rather broad criminal and civil procedural *parajudicial authority* in the laymen's courts.

As is known, the laymen's courts were unable to entrench themselves in the Hungarian legal system either in their original, or in their subsequent form. Neither within the industrial enterprises did they become operative and regular, nor have they provoked any lively revisionary activity in the regular courts by their — rather scarce — awards.[11]

The original purpose of the institution of laymen's courts was to evolve — in accordance with socialist democratism — the independent activity of the workers so as to strengthen the labour discipline, to deal with minor violations of law within the enterprise, and lesser property disputes, with the aim of increasing the community's educative effect on the workers. Well, these aims were realized to a very small extent only. Looking back to the experience of several years: our hopes attaching to the institution of laymen's courts do not seem to have materialized. The disappointment is manifest even in those who still uphold the idea attaching to this institution and urge various measures to re-vitalize it.[12]

We may safely state today that the socio-legal experiment aimed at through the establishment of laymen's courts has essentially *failed*. Why not draw the necessary conclusions, when we are confronted with the problem of simplifying the judicature anyway?

To me there seems to be a practical solution. Let us unify, within the industrial enterprise, the labour arbitration committee and the laymen's court into a new organ, under the sponsorship of the trade union. The new body could take over from their present competence all the tasks not having a judicial-decisory character. This form might facilitate the setting up of similar institutions in the cooperatives. This would enable a subsequent rationalization combined with unification. I will not go into details as yet: maybe the correctness and feasibility of the concept should be proved first.

As it is, we are poorer by an illusion but this is not so bad. It would be worse if we persisted in ignoring the truth any longer.

I have reached the end of my discussion.

It will be clear from the foregoing that I would regard it as expedient if – as a final outcome – the decision of civil cases should concentrate at the regular state courts. (Arbitration, of course, should be still tolerated to the extent provided for in statutory rules). Within the enterprises: unified social committees could be created for dealing with determined types of cases; no other extra-judicial organs, however, should have authority of deciding legal disputes.

As a transient aim, preceding the long-term settlement, we ought to be satisfied with the solution of the problem of economic and labour arbitration, as well as of laymen's courts.

NOTES

[1] Act IV of 1956 decreed their establishment within a few months. Law-Decree No. 6 of 1957 deferred the preset time limits until a statutory rule to be released later; Act I of 1968 only empowers the villages to start committee proceedings in petty offence cases.

[2] Such were e. g.: the three-member special bench formed of the Budapest High Court of Justice dealing with the annulment of the securities destroyed or lost after the German occupation (Council of Min. Decree 4090 of 1945 – VII. 1. and subsequent additions); the Cooperative Court formed in the Royal Supreme Court of Justice consisting of a chairman, two judges and two assessors (sec. 98, Act XI of 1947); the Mixed Court attached to the district courts, consisting of three members – one professional jugde and two arbitrators appointed by the lessor and the lessee, respectively, deciding in disputes affecting the judicial determination (or mitigation) of the rent (Govt. Decree No. 12.910 of 1947 – XI. 1.) .

[3] Sec. 4, Act IV of 1950.

[4] Cf. the Minister of Justice's parliamentary report of April 18, 1969. (Igazságügyi Közlöny, No. 4/1969).

[5] S. Govt. Decree 57 of 1967 – XII. 19. and sec. 106 of Govt. Decree 34 of 1967 – X. 8.

[6] Govt. D. 1 of 1968 – I. 16.

[7] Cf. *I. Zsembery:* "Some Procedural Means of Effective Civil Jurisdiction" – in Hung. – in Magyar Jog and Külföldi Jogi Szemle, No. 5/1967.

[8] See *J. Szilbereky:* "Discussion on the Legal Regulation of Economic Management." *ibidem: L. Névai:* "Forum Problems in Civil Cases Under the New System of Economic Management" (ibidem, No. 12); *L. Timár's* report on V. Szigligeti's lecture: "Discussion on the Main Principles of the Modification of Civil Procedure Rules" (ibid. No. 5/1968); *Gy. Gellért:* "Guiding Principles for the Formation of the Forum System" (ibid. No. 4/1969); *I. Herczeg:* "Some Questions of Principle and Practice of the Forum System" (ibid. No. 5).

[9] Cf. among others: *F. Andó:* "Reform of the Economic Arbitration" (Magyar Jog és Külföldi Jogi Szemle, No. 12/1967); *L. Fülöp:* "Establishment of an Uniform Arbitration System" (Döntőbíráskodás, No. 12/1967); *L. Ujlaki:* "Some New Features of Economic Arbitration" (Jogtud. Közl. No. 3/1968); *idem*: "Bases and Perspective of Economic Arbitration in Hungary" *(ibid.* No. 9/1968); *G. Eörsi:* "The Law of the Transition to the New System of Economic Management" (Budapest, 1968, pp. 15 et seq); *F. Andó:* "Some Legal Aspects of the Introduction of Economic Reform" (Döntőbíráskodás, 2/1969).

[10] Cf. *I. Novák:* "Some Questions Connected With the Speeding-up and Simplification of Civil Proceedings" (Jogtud. Közl. 11/1965)

[11] In the past few years the total number of revision preceedings against the decisions of laymen's courts heard by district courts was between 100 and 150; less than half of these were civil cases.

[12] Cf. *T. Révai:* "Problems of Laymen's Judicature in Civil Cases" (Jogtud. Közl. 3/1963); *G. Szép:* "Material Lawsuits Before Laymen's Courts" (Jog és Társadalom 3/1964);

T. Révai: "Laymen's Courts' Judicature in Practice" (Állam és Igazg. 9/1967); *G. Félegyházi:* "Questions of Theory and Practice In Speeding-up Revisionary Proceedings at District Court" (Jogtud. Közl. 3/1968).

DIE GRUNDLAGEN DER REGELUNG DES FORUMSYSTEMS FÜR ZIVILSACHEN IN DER UNGARISCHEN VOLKSREPUBLIK

ZUSAMMENFASSUNG

Die Grundlage dieses Aufsatzes bildet der Vortrag, den der Verfasser auf dem VII. Kongress des Ungarischen Juristenverbandes im Mai 1969 gehalten hat. Der in der ungarischen juristischen Fachliteratur übliche Ausdruck „Forumsystem" bedeutet hier die Gesamtheit jener Gerichts- und anderer Organe, die aufgrund der geltenden rechtlichen Bestimmungen befugt sind streitige Zivilsachen zu entscheiden. Es ist in der juristischen Literatur üblich, dieses Problem „Zuständigkeit in weiterem Sinne" zu nennen, wenn es sich darum handelt, in welchen streitigen Zivilsachen Gerichte und in welchen andere staatliche (eventuell gesellschaftliche) Organe vorgehen können.

I.

Die am 1. Januar 1968. in Kraft getretene ungarische Wirtschaftsreform zog auch auf dem Gebiete der Rechtsschöpfung bedeutende Veränderungen nach sich. Diese Änderungen liessen auch das Gebiet der Gerichtsbarkeit nicht unberührt. So trat unter anderen mit grossem Nachdruck auch jene Forderung in den Vordergrund, dass das System der Foren, die zur Entscheidung der streitigen Zivilsachen befugt sind, vereinfacht werden müssen und ihre in den vergangenen Jahren eingetretene ungesunde Überwucherung abzustellen ist.

Zurzeit verhält sich die Lage so, dass zur Entscheidung der Zivilrechtsstreite neben den Gerichten – in gewissen Fällen – das wirtschaftliche Vertragsgericht, die Konfliktkommission für Arbeitsstreite, das gesellschaftliche Gericht, die Organe der landwirtschaftlichen Produktionsgenossenschaften und der Handwerkergenossenschaften, die Gewerkschaftsorgane, die Organe der Sozialversicherung, gewisse Organe der Staatsverwaltung usw. befugt sind.

Das Forumsystem der Zivilstreitsachen wurde bereits in der Zeit zwischen den beiden Weltkriegen in Ungarn sehr kompliziert. Nach dem zweiten Weltkrieg und insbesondere nachdem das Verfassungsgesetz vom Jahre 1949 geschaffen wurde, vereinfachte sich bedeutend das System der Gerichts- und gerichtsartigen Organe in Ungarn. Im Laufe der nachfolgenden Jahre begann aber wieder ein Desintegrationsprozess im System dieser Organe. Nach Einführung des neuen Systems der Wirtschaftslenkung ist aber die Lösung des Problems nicht weiter zu verschieben.

Das Wesen des Problems kann im Folgenden zusammengefasst werden:

a) im Gegensatz zu der Forderung des sozialistischen Demokratismus, wonach das Forumsystem des sozialistischen Staates einfach sein müsse um den Werktätigen eine leichte Zurechtfindung zu sichern, ist das Forumsystem der Zivilstreitsachen in Ungarn im Laufe der vergangenen Jahre kompliziert und *schwer übersichtlich* geworden;

b) die derzeitige *Zergliederung* des Forumsystems hindert jetzt schon ausgesprochen die Durchsetzung der Forderung der Einheit der sozialistischen Rechtspflege;

c) anstatt der eindeutigen Regelung der Kompetenzen und der Weisung der dem Wesen nach gleichen Sachen vor dasselbe Forum, entstand in mehreren Fällen eine *Parallelität der Foren.*

Der Verfasser unterstüzt im Aufsatz seine Feststellungen mit Beispielen.

II.

Der zweite Teil des Aufsatzes untersucht die methodischen und prinzipiellen Grundlagen der Regelung des Forumproblems.

Auf die Frage, mit welcher *Methode* die Grundsätze der Regelung festzusetzen sind, scheint eine dreifache zusammengesetzte Antwort richtig zu sein:

a) bei der Bestimmung des Forums ist vor allen in Betracht zu ziehen, ob es sich um eine *Streitsache* handelt (die Sachen ohne Rechtsstreit können nämlich in der Regel aussergerichtlichen Organen anvertraut werden);

b) dabei ist zu untersuchen, aus welchem Kreis *der gesellschaftlichen Verhältnisse* die gegebene Streitsache stammt und demgemäss die Bestimmungen welches *materiellen Rechtszweiges* das betreffende Rechtsverhältnis regeln;

c) neben den genannten beiden objektiven Gesichtspunkten ist noch in Betracht zu ziehen, ob – in subjektiver Hinsicht – *das Verhältnis der im Streit interessierten Parteien* durch Unter- und Überordnung oder durch Nebenordnung charakterisiert ist.

Die gemeinsame Resultante dieser drei Gesichtspunkte wird in den meisten Fällen bereits in die Richtung des entsprechenden Forums (Gericht oder aussergerichtliches Organ) weisen, wobei aber *die Zufälligkeiten der positiv-rechtlichen Regelung* auch dieses System öfters durchbrechen.

Bei den *prinzipiellen Grundlagen* der Lösung des Forumproblems unterscheidet der Verfasser zwei Gruppen der sog. *Regelungsgrundsätze.*

In die erste Gruppe fallen jene *allgemeinen grundlegenden Sätze* der Organisation und der Funktion des sozialistischen Staates, die auch bei der Regelung des Forumproblems massgebend sind, deren Geltung eben auch durch die Regelung gefördert werden soll. Solche höchsten Regelungsgrundsätze sind: die Weiterentwicklung des sozialistischen Demokratismus, die restlose Geltung der sozialistischen Gesetzlichkeit, die Sicherung eines immer wirksameren Rechtsschutzes für die Staatsbürger und die sozialistischen Organisationen.

Als Ergebnis der Untersuchung dieser drei grundlegenden Regelungsgrundsätze gelangt der Verfasser zu der Folgerung, dass die Aufgabe der Vereinfachung des Systems der zur Entscheidung der streitigen Zivilsachen befugten Foren unter gleichzeitiger Sicherung der erhöhten Fachmässigkeit zu lösen ist, d.h. *im Rahmen des zu vereinheitlichenden Forumsystems ist die Spezialisierung der urteilenden Senate* durchzuführen, mit anderen Worten, es ist *eine Integration des Forumsystems und eine Differenzierung der Rechtssprechung* anzustreben.

In die zweite Gruppe der Regelungsgrundsätze gehören jene *Sätze mit fachlichem Charakter*, die unmittelbar, ohne Übertragungen, auf die Lösung des Forumproblems auswirken. Von den zahlreichen derartigen Sätzen hebt der Verfasser folgende vier hervor:

a) im Interesse der Vereinfachung des Forumsystems ist vor allem eine optimale Annäherung der Forderung der *Einheit der Foren* anzustreben. Darin ist auch die Sicherung der Beurteilung der Rechtsstreite desselben Typs durch dasselbe Organ und der Einheit der prinzipiellen Leitung der Gerichtsbarkeit enthalten;

b) nach dessen Verwirklichung wird das Forumsystem auch bedeutend *übersichtlicher* werden;

c) in einem Forumsystem, aus dem die überflüssig gewordenen Institute beseitigt wurden, wird das Auffinden des zur Entscheidung des Rechtsstreites befugten Organs weniger Schwierigkeiten bereiten, d.h. die Foren werden für die Werktätigen *zugänglicher*;

d) die Hauptlinie der Verwirklichung der genannten Erfordernisse soll *in Richtung der Gerichte* führen. Das grundlegende Forum der Rechtsstreite soll immer mehr das Gericht sein. Die Losung „*Hauptgewicht auf das Gericht*" ist so zu verstehen; d.h. die Forderung der *einheitlichen gerichtlichen Rechtssprechung* ist in immer weiterem Kreise zu verwirklichen. Bis dieser Prozess aber entsprechend fortschreitet, müssen die auf das Gerichtsverfahren hinweisenden Elemente des Verfahrens der aussergerichtlichen Organe, die Rechtsstreite entscheiden und die vorderhand noch bestehen bleiben, entwickelt werden. Das bedeutet dem Wesen nach die Forderung der Zugrundenahme des *Gerichtsmodells.*

III.

Im abschliessenden Teil des Aufsatzes behandelt der Verfasser einzeln die drei wichtigsten aktuellen Probleme im Zusammenhang mit der Regelung des Forumsystems, die Gestaltung der Stellung der wirtschaftlichen Vertragsgerichte, der Konfliktkommissionen für Arbeitssachen und der gesellschaftlichen Gerichte unter den Verhältnissen der Wirtschaftsreform.

Der Verfasser nimmt Stellung für das Einschmelzen der *wirtschaftlichen Vertragsgerichte* in die einheitliche Gerichtsorganisation auf die Weise, dass auf den Komitats-

gerichten und auf dem Obersten Gerichtshof neben den bestehenden Kollegien auch ein wirtschaftliches Kollegium errichtet werde.

Im Zusammenhang mit den Konfliktkomissionen *für Arbeitssachen* scheint die Erweiterung der gerichtlichen Zuständigkeit ebenfalls notwendig zu sein. Der Verfasser meint, dass die in Ungarn an den Komitatsitzen errichteten sog. Gebietskonfliktkomissionen für den Arbeitssachen (eigentlich Organe zweiter Instanz der Konfliktkomissionen für Arbeitssachen bei den Unternehmungen) bereits überflüssig geworden sind und ihre Mitarbeiter bei den Gerichten zur Entscheidung der Arbeitsstreite verwendet werden sollten, die als Ergebnis der Erweiterung der Zuständigkeit dorthin gelangen.

Im Zusammenhang mit den *gesellschaftlichen Gerichten* wirft der Verfasser den Gedanken auf, dass diese in den Betrieben mit den Konfliktkommissionen für Arbeitssachen unter der Leitung der Gewerkschaft vereint werden sollten (gesellschaftliche Gebietsgerichte gibt es keine in Ungarn). Ihre bisherigen Gerichtsbarkeitsaufgaben sollten in die Zuständigkeit der Gerichte gewiesen werden.

ОСНОВЫ УПОРЯДОЧЕНИЯ СИСТЕМЫ ФОРУМОВ ДЛЯ ГРАЖДАНСКИХ ДЕЛ В ВЕНГЕРСКОЙ НАРОДНОЙ РЕСПУБЛИКЕ

РЕЗЮМЕ

Основой настоящей статьи служит доклад, прочитанный автором на VII съезде Союза венгерских юристов в мае 1969 года. Выражение „система форумов", принятая в венгерской юридической литературе, в настоящем случае означает совокупность тех судебных и иных органов, которые соответственно распоряжениям действующих норм права располагают компетенцией для разрешения спорных гражданских дел. В юридической литературе принято эту проблему называть „компетенцией, понимаемой в более широком смысле", когда речь идет о том, по каким спорным гражданским делам имеют право отправлять правосудие суды и по каким иные государственные (возможно общественные) органы.

I.

Вступившая в жизнь 1 января 1968 года реформа венгерской экономики принесла значительные изменения и в области законодательства. Эти изменения затронули и область правосудия. Так, в частности, настоятельно выступило на первый план требование упрощения системы форумов, призванных разрешать гражданские правовые споры, требование прекращения нездорового и быстрого их роста, наблюдавшегося в последние годы.

В настоящее время положение таково, что компетенцией по вопросу о решении гражданских правовых споров кроме судов – в определенных случаях – располагают и хозяйственные арбитражные комиссии, расценочно-конфликтные комиссии, общественные суды, органы сельскохозяйственных производственных кооперативов и промышленных промартелей, профсоюзные органы, органы социального и общественного страхования, некоторые органы государственного управления и т.д.

Система форумов по гражданским правовым спорам стала чрезвычайно сложной в Венгрии еще в период между двумя мировыми войнами. После второй мировой войны и главным образом вслед за принятием Конституции 1949 года в значительной степени упростилась в Венгрии система судебных и квазисудебных органов. В последующие годы, однако, снова начался в системе этих органов процесс дезинтеграции. После введения новой системы управления хозяйством разрешение этой проблемы стало неотложным.

Сущность проблемы можно резюмировать в следующем:

a) В отличие от требования социалистического демократизма, соответственно которому система форумов социалистического государства должна быть простой

и обеспечивать трудящимся легкую ориентацию, система форумов гражданских правовых споров в Венгрии в течение последних лет стала более сложной и *плохо обозримой*.

б) Существующая в настоящее время *расчлененность* системы форумов теперь уже определенно задерживает осуществление требований единства социалистического правосудия.

в) Вместо односмысленного упорядочения компетенций и передачи аналогичных дел одним и тем же форумам во многих случаях наблюдается *параллельность форумов*.

Автор в своей работе примерами подтверждает свои выводы.

II.

Вторая часть работы рассматривает методическую и принципиальную основы упорядочения проблемы форумов.

На вопрос о том, каким *методом* необходимо установить принципы упорядочения, кажутся правильными три дополняющие друг друга ответа:

а) При определении форума прежде всего необходимо обращать внимание на то, идет ли речь *о деле, представляющем правовой спор* (дело в том, что дела, не представляющие правового спора, как правило, могут быть поручены несудебным органам.)

б) Наряду с этим необходимо проверить и то, из какого круга *общественных отношений* происходит данное спорное дело и соответственно этому распоряжения какой *отрасли материального права* регулируют данные правовые отношения.

в) Кроме упомянутых выше двух объективных аспектов часто необходимо принимать во внимание и то, что характерно – с точки зрения субъекта – для *отношений между собой сторон*, заинтересованных в споре, отношения подчиненности или координации.

Результат этих трех аспектов, как правило, указывает в направлении соответствующего форума (суд или орган, стоящий вне суда), хотя *случайности позитивного правового урегулирования* не раз пробивают и эту систему.

В числе *принципиальных основ* разрешения проблемы форумов автор различает две группы так называемых *принципов упорядочения*.

К первой группе относятся те *общие основные положения* структуры и деятельности социалистического государства, которые являются руководящими и при упорядочении проблемы форумов, и осуществлению которых должно и способствовать и упорядочение. Эти важнейшие принципы упорядочения следующие: дальнейшее развитие социалистического демократизма, полное осуществление социалистической законности, обеспечение гражданам и социалистическим организациям все более эффективной правовой защиты.

В качестве результата расследования этих трех основных принципов упорядочения автор приходит к такому выводу, что задачу упрощения системы форумов, призванных для разрешения гражданских правовых споров, необходимо разрешить при одновременном интенсивном поднятии специальных знаний, то есть в рамках упрощаемой системы форумов необходимо осуществить специализацию выносящих решение судов, иными словами, необходимо стремиться *к интеграции системы форумов и к дифференцированию судебной деятельности*.

Ко второй группе принципов упорядочения принадлежат те носящие *специальный характер положения*, которые непосредственно, а не косвенно, действуют на разрешение проблемы форумов. Из большого числа такого рода принципов автор выделяет следующие четыре положения:

а) В интересах упрощения системы форумов необходимо прежде всего стремиться к оптимальному приближению требования *единства форумов*. В этом содержится в частности и гарантия рассмотрения правовых споров одного типа одним и тем же органом и обеспечение единства принципиального руководства правосудием.

б) Осуществление этого значительно увеличит и *сбозримость* системы форумов.

в) В очищенной от становившихся излишними учреждений системе форумов уже меньше трудностей будет вызывать найти орган, призванный для разрешения правового спора, иными словами, увеличится *доступность* форумов для трудящихся.

г) Основная линия осуществления упомянутых требований должна идти в направлении судов. Основным форумом правовых споров во все большей степени должны стать суды. Это означает девиз „Лицом к судам", то есть все шире необходимо осуществлять требование *единого (судебного) правосудия.* А до тех пор, пока этот процесс завершится, необходимо развивать те элементы производства пока еще функционирующих внесудебных органов, разрешающих правовые споры, которые сходны с правилами судебного производства. По существу именно это последнее означает требование взятия за основу *„судебной модели"*.

III.

В завершающей части своей работы автор рассматривает в отдельности три актуальные важнейшие проблемы, связанные с упорядочением системы форумов – формирование в условиях экономической реформы положения хозяйственных арбитражных комиссий, расценочно-конфликтных комиссий и общественных судов.

Автор высказывается за слияние *хозяйственных арбитражных комиссий* в единую судебную систему таким образом, чтобы в областных судах и в Верховном Суде наряду с существующими коллегиями была создана дополнительно и коллегия по хозяйственным делам.

В связи с *расценочно-конфликтными комиссиями* также кажется необходимым расширение компетенции судов. Мнение автора таково, что созданные в Венгрии так называемые территориальные областные расценочно-конфликтные комиссии (по существу кассационные органы по сравнению с расценочно-конфликтными комиссиями предприятий) теперь уже стали излишними, их работников необходимо использовать в судах для рассмотрения правовых споров по вопросам труда и зарплаты, попадающих туда вследствие расширения компетенции.

В связи с *общественными судами* автор высказывает такое мнение, что на предприятиях их надо объединить с расценочно-конфликтными комиссиями под общим руководством профсоюзов (территориальных общественных судов в Венгрии не существует). Их теперешние задачи в области правосудия необходимо передать в компетенцию судов.